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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

BRADLEY STEVEN LORD,

Defendant and Appellant.

D053802

(Super. Ct. No. SCD210668)

APPEAL from an order of the Superior Court of San Diego County, Jeffrey F. Fraser, Judge. Affirmed.

Bradley Steven Lord pleaded guilty to using his estranged wife's identifying information for the purpose of forgery and theft (count 4), and forging her name on a deed of trust (count 10). The trial court placed Lord on formal probation for three years subject to conditions set forth in the probation report. It also assessed restitution, imposed various fees and fines, and ordered Lord to serve 50 days of public service.

On appeal, Lord contends that the trial court violated his due process rights by imposing "significant additional conditions and fines to which [he] had not agreed and for

which the court made no oral pronouncement in [his] presence." He argues that we are required to vacate the order and remand the cause to allow him to withdraw his guilty pleas.

As we explain, Lord's failure to obtain a certificate of probable cause bars our consideration of any challenge to the validity of the plea agreement, and he forfeited his challenge to the fines and search waiver condition by failing to object at sentencing. Accordingly, we affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Under the written plea agreement, Lord pleaded guilty to two counts, the district attorney agreed to dismiss the remaining seven counts and not oppose probation, and the court indicated it would stay jail time and order Lord to complete 50 days of public service. Lord initialed the relevant paragraphs of the form agreement, including the following: "I understand that I may receive this maximum punishment as a result of my plea: [3 years 8 months] in State Prison, \$10,000 fine and 4 years parole . . . with return to prison for every parole violation. If I am not sentenced to prison I may receive probation for a period up to 5 years or the maximum prison term, whichever is greater. *As conditions of probation I may be given up to a year in jail custody, plus the fine, and any other conditions deemed reasonable by the Court.* I understand that if I violate any condition of probation I can be sent to State Prison for the maximum term as stated above." (Italics added.)

The probation report prepared in advance of the sentencing hearing recommended payment of probation costs and fines and assessments totaling \$1,131, which were

itemized on the last page of the report. The probation report also recommended a series of probation conditions, including that "[t]he defendant shall: [¶] 1. Submit person, vehicle, residence, property, personal effects, computers and recordable media . . . to search at any time with or without a warrant, and with or without reasonable cause, when required by [a] probation officer or other law enforcement officer."

At the start of the sentencing hearing, the court indicated that it had read the probation report. Defense counsel requested summary probation to "equalize" Lord's treatment with that of a codefendant. The court denied the request and ordered formal probation. Next, defense counsel objected to the probation condition that required Lord's total abstention from the use of alcohol. The court deleted that condition. After counsel finished their arguments, the following exchange took place as the court recited the terms of Lord's probation:

"THE COURT: I am going to put him on formal probation just because I do have some concerns. [¶] He'll be placed on three years formal probation on the following terms and conditions: Sentence to 361 days, credit of one. The balance of that custody is stayed pending successful completion of probation. Fifty days public work service. Have that done by February 1 of '09. Fine of 680, as delineated --

"PROBATION OFFICER: Excuse me, your Honor. Fifty days by February 1st

"THE COURT: Give him till April 1st of '09. He's to obey all laws, *each and every condition outlined in the probation report*. General order of restitution to [Amanda] Lord and Wachovia Savings. . . . [¶] He's to submit his person, place, or property to search with or without reasonable cause by a peace officer; not possess a firearm or ammunition. Any drug conditions listed are made part of the order of this court. No contacts with the codefendants" (Italics added.)

Lord's notice of appeal included a request for a certificate of probable cause to challenge the validity of his guilty pleas. The trial court denied the request, finding that Lord had "not shown reasonable constitutional, jurisdictional, or other grounds for appeal relating to the legality of the proceedings"

DISCUSSION

I. Lord's Challenge to the Validity of the Plea Is Barred

Penal Code section 1192.5 reads in part: "Where the plea is accepted by the prosecuting attorney in open court and is approved by the court, the defendant, except as otherwise provided in this section, cannot be sentenced on the plea to a punishment more severe than that specified in the plea and the court may not proceed as to the plea other than as specified in the plea." Lord contends that because fees and fines in addition to the restitution fine and the condition requiring waiver of his Fourth Amendment rights were not included in the plea agreement or in the admonition given at the change of plea hearing, he should be allowed to withdraw his guilty pleas.

Well-established California law holds that "'a challenge to a negotiated sentence imposed as part of a plea bargain is properly viewed as a challenge to the validity of the plea itself. Therefore, it [is] incumbent upon [such a] defendant to seek and obtain a probable cause certificate in order to attack the sentence on appeal.'" (*In re Chavez* (2003) 30 Cal.4th 643, 650-651, fn. 3; Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b).) The requirement of a certificate of probable cause is intended "'to promote judicial economy' [citation] 'by screening out wholly frivolous guilty . . . plea appeals

before time and money are spent' on such matters as the preparation of the record on appeal [citation], the appointment of appellate counsel [citation], and, of course, consideration and decision of the appeal itself." (*People v. Mendez* (1999) 19 Cal.4th 1084, 1095.)

There is no dispute that Lord failed to obtain a certificate of probable cause. Thus, his appeal is barred to the extent it challenges the validity of the plea.

II. *Lord's Claims of Post-Plea Error Were Forfeited*

Even if we were to conclude that this appeal involves a claim of post-plea error, Lord's failure to object to the fines and the probation search condition in the trial court forfeits that claim here. Again, it is well established that "failure to object and make an offer of proof at the sentencing hearing concerning alleged errors or omissions in the probation report waives the claim on appeal. [Citations.] No different rule should generally apply to probation conditions under consideration at the same time. A timely objection allows the court to modify or delete an allegedly unreasonable condition or to explain why it is necessary in the particular case. . . . A rule foreclosing appellate review of claims not timely raised in this manner helps discourage the imposition of invalid probation conditions and reduce the number of costly appeals brought on that basis. [Citation.]" (*People v. Welch* (1993) 5 Cal.4th 228, 234-235, fn. omitted.)

The record in this case clearly demonstrates that Lord had notice of the fines and fees, as well as the probation search condition, and failed to object at the sentencing hearing. First, Lord received notice of potential fines and conditions in the written plea agreement. He initialed the paragraph in which he acknowledged that he could receive a

fine as a condition of probation, "and any other conditions deemed reasonable by the Court." Second, Lord affirmed at the change of plea hearing that he had understood "each and every thing" in the written plea agreement. Third, the probation report, made available to the court and counsel before the sentencing hearing (Pen. Code, § 1203, subd. (b)(2)(E); *Welch, supra*, 5 Cal.4th at p. 234), provided Lord with advance notice of the recommended fees and fines and the recommended probation search condition. Lord clearly had notice of these probation conditions, because defense counsel objected at sentencing to the condition barring alcohol use. Fourth, during the sentencing hearing, the court recited the search waiver as a condition of probation. Lord did not, however, object to the fees, fines or search waiver at that hearing. Accordingly, Lord forfeited his claims on appeal. (*Id.* at pp. 234-235.)

DISPOSITION

The order is affirmed.

McINTYRE, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.